REMARKS/ARGUMENTS

The rejections presented in the Office Action dated January 19, 2006 (hereinafter Office Action) have been considered. Claims 1-21 remain pending in the application. Independent claims 1, 10, 16, and 20 have been amended. New dependent claims 22 and 23 have been added. Reconsideration of the pending claims as amended and allowance of the application in view of the present response is respectfully requested.

Claims 1-14 were objected to because of informalities identified on page 2 of the Office Action. Applicant has amended claims 1 and 10 to recite "instrument" rather than the object to term "instruments." Applicant believes the amendments to claims 1 and 10 obviate the Examiner's objection to these claims.

Claims 1, 2, 4-7, 9, 10, 13, 14, 16, 19, and 20 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,875,119 to *Bauman et al.* (hereinafter "*Bauman*"). Claims 3, 11, 12, 17, 18, and 21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Bauman* in view of U.S. Patent No. 6,819,538 to *Blaauw et al.* (hereinafter "*Blaauw*"). Claims 8 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Bauman* in view of U.S. Patent No. 6,384,627 to *Fross et al.* (hereinafter "*Fross*").

Applicant has carefully considered the Examiner's Response to Arguments presented in the Office Action. Notwithstanding the Examiner's contentions expressed in the Examiner's Response, Applicant respectfully asserts that *Bauman* does not teach, expressly or inherently, each and every feature of Applicant's independent claims 1, 10, 16, and 20.

In the Examiner's Response to Arguments, the Examiner contends that *Bauman* teaches at least one component (i.e., computing system 102) is being monitored and an instrument (i.e. performance monitor 100) is monitoring the component 102. The Examiner states that *Bauman* is seen as teaching one component being monitored by its respective instrument. On this basis, the Examiner is maintaining the rejection of claims 1-21.

Respectfully, the characterization of the *Bauman* teachings is in error. *Bauman* teaches a computing system 102 that includes several sections or components which are monitored by a performance monitor. In particular, *Bauman* teaches, at column 3, lines 56-62, that:

> The computing system being monitored may include a plurality of printed circuit boards (PCB) 104, each of which can be monitored for their performance. Various parts of each printed circuit board may also be monitored, such as predefined logic sections 106, busses 108, ASICs 110, as well as other components.

Figure 1 of *Bauman* shows separate PCBs 104 each including a logic section 106, bus 108, and ASIC 110. Components 106, 108, 110 of each PCB 104 are connected to a common bus 112, which is coupled to a performance monitor 100 via connector 122.

Bauman further teaches, at column 4, lines 17-19, that:

> The performance monitor 100 includes circuitry to receive information concerning particular sections or components of the computing system 102.

Respectfully, and contrary to the Examiner's characterization of *Bauman* in the Response to Arguments section of the Office Action, *Bauman* clearly teaches a performance monitor 100 that monitors a multiplicity of sections or components of computing system 102. Figure 1 alone shows some twelve sections or components (3 components of each of 4 PCBs 104) that are monitored by performance monitor 100.

Applicant's claimed subject matter, as amended, recites an aspect of the invention where each of one or more instruments is respectively functionally connected only to a single one of the monitorable components of the closed system. *Bauman*, in contrast, discloses a performance monitor 100 that monitors many sections or components of computing system 102.

In the Response to Arguments section of the Office Action, the Examiner contends that *Bauman* teaches at least one component (i.e., computing system 102) is being monitored and an instrument (i.e. performance monitor 100) is monitoring the component 102. Respectfully, this characterization is factually incorrect and inconsistent with the Examiner's previous characterization of *Bauman*.

Bauman teaches many components (e.g., those on and including PCBs 104) that are included in computing system 102. The Examiner's assertion that computing system 102 is a single component is not supported by the *Bauman* teachings (see above discussion). This characterization is clearly inconsistent with the very clear teachings of *Bauman* that sections or components of a computing 102 are subject to monitoring by performance monitor 100.

This new characterization of *Bauman* is also inconsistent with the Examiner's prior characterization of *Bauman*. For example, on page 2, paragraph 2 of the Office Action, the Examiner characterizes *Bauman* as teaching "a closed system comprising at least one of the following components configured to be monitored: a processor, a memory, peripheral equipment, and interface logic . . . " (emphasis added).

Applicant has amended independent claims 1, 10, 16, and 20 to recite, in various forms, a data collector configured to receive operational information retrieved by the at least one instrument. Support for this amendment is found, for example, in paragraph 24 of Applicant's disclosure. *Bauman* fails to teach this feature. Instead, *Bauman*, at column 3, lines 63-67 and column 4, lines 17-19, for example, teaches that the portions of the computing system 102 being monitored must provide the appropriate signals to the performance monitor 100.

Applicant's data collector configured to receive operational information "retrieved" by the at least instrument is distinguishable over the teachings of *Bauman*. One skilled in the art would appreciate the distinction between (1) a data collector configured to receive operational information that is "retrieved" by an instrument and (2) circuitry of a performance monitor that merely "receives" information from sections or components of a computing system.

In the recent case of *Phillips v. AWH Corp.*, the Court reiterated long-standing precedence that "claims are to be construed in the light of the specifications and both are to be read with a view to ascertaining the invention." *Phillips v. AWH Corp.*, 75 USPQ2d 1321 (Fed. Cir. 2005). The Court further reiterated that the specification is appropriately resorted to "for the purpose of better understanding the meaning of the claims." *Id.* (quoting *White v. Dunbar*, 119 US 47, 51 (1886)). When read in light of Applicant's specification, Applicant's data collector that is configured to receive operational information "retrieved" by an instrument is clearly distinguishable from *Bauman's* performance monitor circuitry that merely "receives" information from sections or components of a computing system.

Respectfully, the rejection of independent claims 1, 10, 16, and 20 under 35 U.S.C. §102(b) is not sustainable, as the Examiner has not established *prima facie* anticipation of each and every element recited in these claims. The disclosure in an anticipating reference must provide an enabling disclosure of the desired subject matter; mere naming or description of the subject matter is insufficient, if it cannot be produced without undue experimentation. *Elan Pharm., Inc. v. Mayo Foundation for Medical and Education Research*, 346 F.3d 1051, 1054 (Fed. Cir. 2003). See, also, MPEP § 2121.01. *Bauman* simply does not provide a teaching as to how a single computing system 102 (but not multiple sections or components of the single computing system 102) can be monitored by a single performance monitor 100.

To support a case of *prima facie* anticipation, the identical invention must be shown in as complete detail as is contained in the claim subject to an anticipation rejection. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Respectfully, the identical invention recited in Applicant's independent claims 1, 10, 16, and 20 has not been shown in *Bauman* in as complete detail as is recited in these claims. Applicant respectfully submits that *Bauman* does not teach every element of claim 1, 10, 16, and 20, and therefore fails to anticipate these claims.

Dependent claims 2, 4-7, and 9 are dependent from independent claim 1; dependent claims 13 and 14 are dependent from independent claim 10; and dependent claim 19 is dependent from independent claim 16. These dependent claims also stand rejected under 35

U.S.C. §102(b) as being unpatentable over *Bauman*. While Applicants do not acquiesce with the particular rejections to these dependent claims, including any assertions concerning common knowledge, obvious design choice and/or what may be otherwise well-known in the art, it is believed that these rejections are moot in view of the remarks made in connection with independent claims 1, 10, and 16. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from the cited references. Therefore, it is respectfully submitted that dependent claims 2, 4-7, 9, 13, 14, and 19 are also not anticipated by *Bauman*.

Claims 3, 8, 11, 12, 15, 17, 18, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combinations of references identified above. *Bauman* is asserted as the primary reference in each of these rejections. To establish a *prima facie* case of obviousness based on a combination of references, three basic criteria must be met, as is set forth in M.P.E.P., §2143. These criteria include that the prior art references must teach or suggest all of the claim limitations.

As set forth above, Applicant submits that these claims are distinguishable from *Bauman*. Applicant also submits that *Blaauw* and *Fross* fail to supply the features of Applicant's rejected claims that are clearly missing from *Bauman*. Any combination of the asserted references fails to teach or suggest at least the features set forth in independent claims 1, 10, 16 and 20. Dependent claims 3, 8, 11, 12, 15, 17, 18, and 21 include all of the limitations of the base claim and any intervening claims. "If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious." M.P.E.P. §2143.03; *citing In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, dependent claims 3, 8, 11, 12, 15, 17, 18, and 21 are also allowable over the combination of asserted references, for at least the reason that the cited combination of references does not teach or suggest all of the limitations of these claims. Applicant maintains its position in the prior responsive communications, and refers the Examiner to additional arguments presented therein that further distinguish the claimed subject matter from the asserted references, when viewed alone or in combination.

It is respectfully submitted that *prima facie* obviousness is not established for claims 3, 8, 11, 12, 15, 17, 18, and 21, as it has not been established that the cited combination of asserted references teaches or suggests all the claim limitations. It is respectfully submitted that these claims are in condition for allowance, as the combination of references fails to at least teach what is set forth in the independent claims as amended.

New dependent claims 22 and 23, which depend from claim 1, are clearly directed to features neither taught nor suggested by the asserted references or any combination thereof.

Applicant respectfully submits that the currently pending claims and new claims are in condition for allowance, timely notification of which is respectfully requested.

Authorization is given to charge Deposit Account No. 50-3581 (KOLS.063PA) any necessary fees for this filing, including the additional claim fee necessitated by the addition of new claims as indicated above. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact him at to discuss any issues related to this case.

Respectfully submitted,
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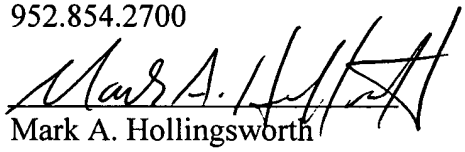
By: 
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